

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

WASHINGTON REHABILITATION
Respondent

Case No.: I-00-20331

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. I-00-20331) served January 4, 2002, the Government charged Respondent Washington Rehabilitation with a violation of 21 DCMR 700.3 for allegedly failing to properly containerize solid wastes.¹ The Notice of Infraction alleged that this violation occurred on January 3, 2002 at 4011 3rd Street, SE and sought a fine of \$1,000.

On January 23, 2002 Respondent, through its property manager, filed a plea of Deny pursuant to D.C. Official Code § 2-1802.02(3), along with a request for a hearing.

¹ 21 DCMR 700.3 provides: “All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.”

Accompanying Respondent's plea and request was a letter from the property manager indicating that Respondent sought a hearing because it could not determine which apartment unit within the building located at 4011 3rd Street, SE was the actual site of the infraction.²

An evidentiary hearing was held on March 6, 2002. Johnathan Harvey, the charging inspector in the case, appeared on behalf of the Government. John Weikel of Winn Management Company, Respondent's property manager, appeared on behalf of Respondent. Based upon the testimony of the witnesses and my evaluation of their credibility, the admitted documentary evidence and the entire record herein, I now make the following findings of fact and conclusions of law:

II. Findings of Fact

1. At all relevant times, Respondent Washington Rehabilitation was the owner of an apartment building located at 4011 3rd Street, SE which is part of a larger complex of buildings called the Atlantic Gardens. At all relevant times, the Atlantic Gardens complex was managed by John Weikel of the Winn Management Company.

² At the hearing, Respondent's property manager testified that at the time he submitted the plea of Deny on behalf of Respondent, he did not know that the cited violation related to a dumpster in the back of the building, as opposed to a specific apartment unit within the building. Respondent's receipt of the photographs that the Government introduced at trial without objection (Petitioner's Exhibits ("PX") 100-102) clarified this matter for Respondent. Respondent maintained its plea of Deny at the hearing, however.

2. On January 3, 2002, the government inspector observed a dumpster overflowing with waste, including plastic bags which, by reasonable inference, I find contained food wastes, abutting a fence in the rear of 4011 3rd Street, SE. PX 100-102. The dumpster observed by the inspector was designated to be used by tenants residing at 4011 3rd Street as well as those residing at 4019 3rd Street, SE. The building located at 4019 3rd Street SE is also owned by Respondent and is part of the Atlantic Gardens complex. In total, there are thirteen apartment units contained in the 4011 and 4019 3rd Street buildings.
3. Waste is scheduled to be removed from the dumpster in the rear of 4011 3rd Street, SE on Wednesday of each week. Respondent speculated at the hearing that, due to the January 1, 2002, holiday, its trash collector may have been off schedule and the trash pick-ups delayed by at least a day. Respondent submitted no evidence of a delayed trash pick-up, however.

III. Conclusions of Law

1. By allowing the dumpster in the rear of its property to be open and overflowing with waste, including plastic bags filled with trash, on January 3, 2002 as is reflected in PX 100-102, Respondent failed to store and containerize its solid wastes “in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard”, and, as a result, violated 21 DCMR 700.3. 21 DCMR 700.3. An overflowing dumpster containing, among other things, plastic bags filled with food wastes, is an open invitation for insects

and rodents to feed and breed. *See DOH v. Lin*, OAH No. I-00-70185 at 3 (Final Order, January 29, 2002). As the owner of the property upon which the dumpster is located, Respondent is in the best position to “undertake reasonable precautions to ensure that its trash does not become a food source for rats.” *Id.*; *see also Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 204 (D.C. 1995).³ There is no evidence in the record that Respondent took such precautions in this case, however.

2. Finally, Respondent’s speculation as to a missed trash pick-up, even if true, is unavailing. Respondent has made a business decision to utilize one dumpster with a weekly pick up for thirteen apartment units, in an apparent violation of 21 DCMR 705.2(a) which requires at least twice per week collection of solid waste on non-Supercan routes, unless otherwise approved by the Mayor. It is, therefore, appropriate that Respondent bear any risks associated with that business decision.
3. A fine of \$1,000 is authorized for a first offense of 21 DCMR 700.3, which will be imposed without reduction. *See* 16 DCMR §§ 3201.1(a)(1), 3216.1(b).

³ This allocation of responsibility reflects a policy decision by the D.C. Council to address the District of Columbia’s substantial rodent infestation problem. *See* The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. *See* 47 D.C. Reg. 8692 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondent shall pay **ONE THOUSAND DOLLARS (\$1,000)** in accordance with the attached instructions within twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if the Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03 (f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03 (i), and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03 (b)(7).

/s/ **03/12/02**

Mark D. Poindexter
Administrative Judge